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Report of the United Nations Commission on International Trade Law on the work of its fiftieth session

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Report of the United Nations Commission on International Trade Law on the work of its fiftieth session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity, common interest and respect for the rule of law, to the elimination of discrimination in international trade and, thereby, to peace, stability and the well-being of all peoples,

Having considered the report of the Commission,[1]

Reiterating its concern that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim

[1] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17).

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of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law;[1]

2. *Commends* the Commission for the finalization and adoption of the UNCITRAL Model Law on Electronic Transferable Records;[2]

3. *Also commends* the Commission for the finalization and adoption of the Guide to Enactment of the UNCITRAL Model Law on Secured Transactions, which provides useful background and explanatory information for States in revising or adopting legislation on the basis of the Model Law, which is aimed at establishing an efficient secured transactions regime that would increase access to affordable secured credit and promote sustainable development through the facilitation of international trade and commercial activities, and requests the Secretary-General to publish the Guide to Enactment of the Model Law, including electronically, in the six official languages of the United Nations and to disseminate it broadly to Governments and other interested bodies;[3]

4. *Congratulates* the Commission on its fiftieth anniversary, and notes with satisfaction that the Congress to commemorate the anniversary was held in Vienna from 4 to 6 July 2017 during the Commission's fiftieth session, entitled "Modernizing International Trade Law to Support Innovation and Sustainable Development", which acknowledged the centrality of international cooperation and coordination to the Commission's achievements, elicited innovative ideas for modernizing international trade law in a sustainable manner that could not only raise awareness of the Commission's work and its potential to support cross-border commerce[4] but also contribute to the 2030 Agenda for Sustainable Development, and emphasized the leading role played by the Commission in providing an inclusive, transparent and multilateral forum in which to address the legal challenges facing international trade, and requests the Secretary-General to ensure the publication of the proceedings of the Congress to the extent permitted by available resources;

5. *Also notes with satisfaction* the contributions from the Fund for International Development of the Organization of the Petroleum Exporting Countries and from the European Commission, which allow the operation of the repository of published information under the Rules on Transparency in Treaty-based Investor-State Arbitration[5] and that the Commission reiterated its strong and unanimous opinion that the secretariat of the Commission should continue to operate the transparency repository, which constitutes a central feature both of the

[2] Ibid., chap. III, sect. A.
[3] Ibid., chap. IV, sect. A.
[4] Ibid., chap. XV, sect. C.
[5] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), annex I.

Rules on Transparency and of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention on Transparency);[6]

6. *Requests* the Secretary-General to continue to operate, through the secretariat of the Commission, the repository of published information in accordance with article 8 of the Rules on Transparency, as a pilot project until the end of 2020, to be funded entirely by voluntary contributions, and to keep the General Assembly informed of developments regarding the funding and budgetary situation of the transparency repository based on its pilot operation;

7. *Takes note with interest* of the decisions taken by the Commission as regards its future work and the progress made by the Commission in its work in the areas of micro, small and medium-sized enterprises, dispute settlement, electronic commerce, insolvency law and security interests,[7] and encourages the Commission to continue to move forward efficiently to achieve tangible work outcomes in those areas;

8. *Also takes note* of the decision by the Commission[8] to entrust Working Group III with a broad mandate to work on the possible reform of investor-State dispute settlement, whereby it would: first, identify and consider concerns regarding investor-State dispute settlement; second, consider whether reform was desirable in the light of any identified concerns; and, third, if the Working Group were to conclude that reform was desirable, develop relevant solutions to be recommended to the Commission with a view to allowing each State the choice of whether and to what extent it wished to adopt the relevant solution(s);

9. *Further takes note* of the decision by the Commission[9] to reaffirm the mandate given to Working Group IV at its forty-ninth session to take up work on the topics of identity management and trust services, as well as cloud computing, and to revisit that mandate at its following session, in particular if the need arose to prioritize between the topics or to give a more specific mandate to the Working Group as regards its work in the area of identity management and trust services;

10. *Endorses* the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field, and in this regard appeals to relevant international and regional organizations to coordinate their activities with those of the Commission, to avoid duplication of efforts and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law;

11. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with technical cooperation and assistance in the field of international trade law reform and development, and in this connection:

(a) Welcomes the initiatives of the Commission towards expanding, through its secretariat, its technical cooperation and assistance programme, and in that respect encourages the Secretary-General to seek partnerships with State and non-State actors to increase awareness about the work of the Commission and facilitate the effective implementation of legal standards resulting from its work;

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[6] Resolution 69/116, annex.

[7] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), chaps. III-VII.

[8] Ibid., para. 264.

[9] Ibid., para. 127.

(b) Expresses its appreciation to the Commission for carrying out technical cooperation and assistance activities and for providing assistance with legislative drafting in the field of international trade law, and draws the attention of the Secretary-General to the limited resources that are made available in this field;

(c) Expresses its appreciation to the Governments whose contributions enabled the technical cooperation and assistance activities to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, for the financing of special projects and otherwise to assist the secretariat of the Commission in carrying out technical cooperation and assistance activities, in particular in developing countries;

(d) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the technical cooperation and assistance programme of the Commission and to cooperate with the Commission and coordinate their activities with those of the Commission in the light of the relevance and importance of the work and programmes of the Commission for the promotion of the rule of law at the national and international levels and for the implementation of the international development agenda, including the achievement of the 2030 Agenda for Sustainable Development;[10]

(e) Recalls its resolutions stressing the need to strengthen support to Member States, upon their request, in the domestic implementation of their respective international obligations through enhanced technical assistance and capacity-building, and welcomes the efforts of the Secretary-General to ensure greater coordination and coherence among United Nations entities and with donors and recipients;

12. *Recalls* the importance of adherence to the rules of procedure and methods of work of the Commission, including transparent and inclusive deliberations, taking into account the summary of conclusions as reproduced in annex III to the report on the work of its forty-third session,[11] requests the Secretariat to issue, prior to meetings of the Commission and of its working groups, a reminder of those rules of procedure and methods of work with a view to ensuring the high quality of the work of the Commission and encouraging the assessment of its instruments, and recalls in this regard its previous resolutions related to this matter, and notes in that regard the Commission's discussions during its fiftieth session on its methods of work, including the request by Member States that the Secretariat seek and take into account the views of States on the draft provisional agenda as early as possible before the next session of the Commission,[12] as well as achieve the right balance between written and oral methods of communication of necessary information to the Commission;[13]

13. *Welcomes* the activities of the United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific, in the Republic of Korea, towards providing capacity-building and technical assistance services to States in the Asia-Pacific region, including to international and regional organizations, expresses its appreciation to the Republic of Korea and China, whose

[10] Resolution 70/1.

[11] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17).

[12] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), para. 479.

[13] Ibid., para. 480.

contributions enabled continuing operation of the Regional Centre, notes that the continuation of the regional presence relies entirely on extrabudgetary resources, including but not limited to voluntary contributions from States, welcomes expressions of interest from other States in hosting regional centres of the Commission, and requests the Secretary-General to keep the General Assembly informed of developments regarding the establishment of regional centres, in particular their funding and budgetary situation;

14. *Welcomes* the offer of the Government of Bahrain, approved by the Commission, to establish, subject to the relevant rules and regulations of the United Nations and the internal approval process of the Office of Legal Affairs of the Secretariat, a regional centre for the Middle East and North Africa in Bahrain as an important step for the Commission in reaching out to increase familiarity with UNCITRAL texts and to provide technical assistance to developing countries in the region, it being understood that the establishment of a regional presence would have to rely entirely on extrabudgetary resources, including but not limited to voluntary contributions from States,[14] and expresses its appreciation to the Government of Bahrain for its generous contribution to this project, and requests the Commission to keep the General Assembly informed of developments regarding the project, in particular its funding and budgetary situation, in its annual report;

15. *Welcomes* the offer of the Government of Cameroon, approved by the Commission, to establish, subject to the relevant rules and regulations of the United Nations and the internal approval process of the Office of Legal Affairs of the Secretariat, a Regional Centre for Africa in Cameroon as an important step for the Commission in reaching out to increase familiarity with Commission texts and to provide technical assistance to developing countries in the region, it being understood that the establishment of a regional presence would have to rely entirely on extrabudgetary resources, including but not limited to voluntary contributions from States, expresses its appreciation to the Government of Cameroon for its generous contribution to this project, and requests the Commission to keep the General Assembly informed of developments regarding the project, in particular its funding and budgetary situation, in its annual report;

16. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the Trust Fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General, in order to enable renewal of the provision of that assistance and to increase expert representation from developing countries at sessions of the Commission and its working groups, necessary to build local expertise and capacities in those countries to put in place a regulatory and enabling environment for business, trade and investment;

17. *Decides*, in order to ensure full participation of all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the seventy-second session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

18. *Endorses* the conviction of the Commission that the implementation and effective use of modern private law standards in international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger and that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to

[14] Ibid., paras. 295-296.

promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General;

19. *Notes* the statement and the experts' views about the role of UNCITRAL in promoting the rule of law presented during the fiftieth session of the Commission on ways and means of further disseminating international law to strengthen the rule of law from the perspective of the Commission's areas of work and the comments transmitted by the Commission pursuant to paragraph 22 of General Assembly resolution 71/148 of 13 December 2016, highlighting its role in promoting the rule of law, in particular through wide dissemination of international commercial law, including across the United Nations system;[15]

20. *Notes with satisfaction* that, in paragraph 8 of the declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, adopted by consensus as resolution 67/1 of 24 September 2012, Member States recognized the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship and, in this regard, commended the work of the Commission in modernizing and harmonizing international trade law and that, in paragraph 7 of the declaration, Member States expressed their conviction that the rule of law and development were strongly interrelated and mutually reinforcing;

21. *Also notes with satisfaction* that, in paragraph 89 of the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, adopted by the General Assembly by consensus as resolution 69/313 of 27 July 2015, States endorsed the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field;

22. *Reiterates its request* to the Secretary-General, in conformity with resolutions of the General Assembly on documentation-related matters,[16] which, in particular, emphasize that any invitation to limit, where appropriate, the length of documents should not adversely affect either the quality of the presentation or the substance of the documents, to bear in mind the particular characteristics of the mandate and functions of the Commission in the progressive development and codification of international trade law when implementing page limits with respect to the documentation of the Commission;[17]

23. *Requests* the Secretary-General to continue the publication of Commission standards and the provision of summary records of the meetings of the Commission, including committees of the whole established by the Commission for the duration of its annual session, relating to the formulation of normative texts, and takes note of the Commission's decision to continue the trial use of digital recordings, in parallel with summary records where applicable, with a view to assessing the experience of using digital recordings and, on the basis of that assessment, taking a decision at a future session regarding the possible replacement of summary records by digital recordings;[18]

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[15] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), chap. XVI.

[16] Resolutions 52/214, sect. B, 57/283 B, sect. III, and 58/250, sect. III.

[17] Resolutions 59/39, para. 9, and 65/21, para. 18; see also *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 124-128.

[18] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 276.

24. *Recalls* paragraph 48 of its resolution 66/246 of 24 December 2011 regarding the rotation scheme of meetings between Vienna and New York;

25. *Stresses* the importance of promoting the use of texts emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to conventions, enacting model laws and encouraging the use of other relevant texts;

26. *Notes* the Commission's decision to commend the use of the Uniform Rules for Forfaiting of the International Chamber of Commerce, as appropriate, in forfaiting transactions, to facilitate international receivables financing and thus international trade more generally;

27. *Notes with appreciation* the work of the Secretariat on the system for the collection and dissemination of case law on Commission texts in the six official languages of the United Nations (the CLOUT system), notes the resource-intensive nature of the system, acknowledges the need for further resources to sustain and expand it, and in this regard welcomes efforts by the Secretariat towards building partnerships with interested institutions, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to assist the secretariat of the Commission in raising awareness as to the availability and usefulness of the CLOUT system in professional, academic and judiciary circles and in securing the funding required for the coordination and expansion of the system and the establishment, within the secretariat of the Commission, of a pillar focused on the promotion of ways and means of interpreting Commission texts in a uniform manner;

28. *Welcomes* the continued work of the Secretariat on digests of case law related to Commission texts, including their wide dissemination, as well as the continuing increase in the number of abstracts available through the CLOUT system, in view of the role of the digests and the CLOUT system as important tools for the promotion of the uniform interpretation of international trade law, in particular by building local capacity of judges, arbitrators and other legal practitioners to interpret those standards in the light of their international character and the need to promote uniformity in their application and the observance of good faith in international trade;

29. *Recalls* its resolutions affirming the importance of high-quality, user-friendly and cost-effective United Nations websites and the need for their multilingual development, maintenance and enrichment,[19] commends the fact that the website of the Commission is published in the six official languages of the United Nations, and welcomes the continuous efforts of the Commission to maintain and improve its website, including by developing new social media features, in accordance with the applicable guidelines;[20]

30. *Expresses its appreciation* to Renaud Sorieul, Secretary of the United Nations Commission on International Trade Law since 2008, who will retire on 31 October 2017, for his outstanding and devoted contribution to the process of the unification and harmonization of international trade law in general and to the Commission in particular.

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[19] Resolutions 52/214, sect. C, para. 3; 55/222, sect. III, para. 12; 56/64 B, sect. X; 57/130 B, sect. X; 58/101 B, sect. V, paras. 61-76; 59/126 B, sect. V, paras. 76-95; 60/109 B, sect. IV, paras. 66-80; and 61/121 B, sect. IV, paras. 65-77.

[20] Resolution 63/120, para. 20.